SUPREME COURT OF KENTUCKY
2014-SC-000373-D
(2012-CA-001961)

GARY MARTIN — APPELLANT

v. FRANKLIN CIRCUIT COURT
~~2007-CI-00820~~

STEPHEN O'DANIEL — APPELLEE

and

~~2014-SC-000389-D~~
~~(2012-CA-001961)~~

MIKE SAPP — APPELLANT

v. FRANKLIN CIRCUIT COURT
~~2007-CI-00820~~

STEPHEN O'DANIEL — APPELLEE

and

~~2014-SC-000394-D~~
~~(2012-CA-001961)~~

BOBBY MOTLEY — APPELLANT

v. FRANKLIN CIRCUIT COURT
~~2007-CI-00820~~

STEPHEN O'DANIEL — APPELLEE

DISCRETIONARY REVIEW GRANTED FROM THE
COURT OF APPEALS DECISION IN 2012-CA-1961

BRIEF OF APPELLANT, GARY MARTIN

Certificate of Service

This brief was served by depositing true copies in the United States Mail, first class, postage prepaid, addressed to: Thomas E. Clay, Esq., Meidinger Tower, Suite 1730, 462 South Fourth Avenue, Louisville, KY 40202; Charles E. Johnson, Esq., Johnson & Engel, 43 S. Main Street, Winchester, KY 40391; Lindol Scott Miller, Esq., Kentucky State Police Legal Office, 919 Versailles Road, Frankfort, KY 40601; Honorable Sheila R. Isaac, Special Judge, 551 Robert F. Stephens Courthouse, 120 N. Limestone Street, Lexington, KY 40507 and Honorable Samuel P. Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat

Drive, Frankfort, KY 40601 on this the 20 day of May, 2015. It is further certified that the record on appeal was not withdrawn from the Office of the Franklin Circuit Court Clerk.

Respectfully submitted,

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INTRODUCTION

This is a malicious prosecution action brought by Appellee against Appellant, Detective Gary Martin, and others who were directed to investigate possible criminal activities of Appellee.

The information discovered during the investigation was considered along with other information by a special prosecutor who elected to present the case to a grand jury who indicted Appellee.

STATEMENT CONCERNING ORAL ARGUMENT

An oral argument will be helpful in this case because of the history of this case.

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STATEMENT OF THE CASE

Appellant, a Kentucky State Police Officer was assigned by his superior officer, Major Sapp, to conduct an investigation about Appellee's attempt to license a stolen car.[1]

The Appellee unknowingly purchased a stolen car. After purchase Appellee discovered that parts on the car were for a 1975 model Corvette rather than a 1974 model. He took the car to Detective Bill Riley, a recognized Kentucky State Police expert on stolen cars. Detective Riley found the vehicle identification number ("VIN") was glued on and was not the manufacturer's VIN. Detective Riley also found the car had been stolen in 1981 and that the insurer, State Farm Insurance Company ("State Farm") had paid the owner under a theft insurance policy. RA2, Vol. III, Riley depo., pp. 453-4.

Appellee initially may have been led to believe through his first contact with State Farm that because State Farm could not find records in this matter that State Farm would have no interest in the car. This led to a misunderstanding between Appellee and Detective Bill Riley. When Riley discovered that the car was a stolen car the Kentucky State Police were required to impound the car pursuant to KRS 16.200(3) and 186A.320. Detective Riley advised Appellee that if a lawful owner of the car could not be found that the car would be forfeited and possibly crushed. KRS 186A.320(3) and 500.090 so provide. Throughout this proceeding Riley's statement that the car "would be crushed" has been advanced by Appellee's counsel as showing some personal prejudice against Appellee. RA2, Vol. III, Riley depo., p. 426. Riley was dismissed as a defendant from this litigation. There is no

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[1] The Franklin Circuit Court Clerk's designation of March 12, 2010, is referred to as RA1 and the designation of December 28, 2012 is referred to as RA2.

evidence that Appellant Martin, Major Sapp or Detective Motley ever said anything about crushing the car. The car was never crushed. State Farm, upon finding its records decided it wanted the car. Detective Riley notified State Farm, the lawful owner of the car, pursuant to KRS 186A.320(1).

Unfortunately, Appellee's bosses with the Justice and Public Safety Cabinet became involved in supporting Appellee's claim to the car. Appellee was employed by the Cabinet. Lieutenant Governor Pence, Secretary of the Justice Cabinet, his deputy, C. Cleveland Gambill, and the general counsel, Luke Morgan, all supported Appellee's claim. It is difficult to understand why they thought Appellee could secure a title superior to State Farm. This intervention with the statutory duties of the Kentucky State Police was distracting until the Cabinet officials came to understand that the Kentucky State Police were conducting a criminal investigation. Mr. Gambill, Deputy Secretary, then wrote the Kentucky State Police and acknowledged that the criminal investigation should continue. RA2, Vol. 1, pp. 104-112, Sum. Judg. Memo, (Martin) Ex. 4, Appendix 3.

Appellee on several occasions contacted the Kentucky Department of Vehicle Regulation and sought to obtain title to the vehicle. The Department refused, knowing that State Farm was in the process of preparing an application for a salvage title. The Department believed that because the VIN had been altered that a salvage title was necessary. This would alert any subsequent buyer of the vehicle of the prior alteration and the fact that it was once a stolen vehicle. RA2, Vol. III back of page 377, Vol. 1, O'Daniel depo., pp. 115-117.

Unfortunately for Appellee he decided to persuade Eva McDaniel, Jessamine County Clerk, to alter the title documents to show a corrected VIN and model for the car. He

presented to her a confidential inspection report prepared by the Kentucky State Police. He secured this report through the efforts of Luke Morgan, general counsel for the Justice and Public Safety Cabinet. The title documents produced by clerk McDaniel did not show the salvage status of the title. Neither was Ms. McDaniel told by Appellee that State Farm had a claim for title to the car.

The Department of Vehicle Regulation, being knowledgeable in this matter, refused to issue a title to Appellee. It also triggered KRS 186A.255 which requires the Department to notify the Kentucky State Police where one attempts to title a stolen vehicle or supply false information about a title. This is when Appellant, Detective Martin first became involved. He was ordered by Major Sapp to investigate this case. He and Detective Motley commenced interviewing persons. Detective Motley first interviewed Eva McDaniel, Jessamine County Clerk. Detective Martin interviewed her on two later occasions. The interviews are consistent in showing Appellee brought the KSP confidential vehicle inspection report to her and represented that she could enter the information thereon and produce a corrected title in Appellee's name. He did not tell her that State Farm was claiming title to the car. RA2, Vol. III, pp. 330-335.

When the Department of Vehicle Regulation refused to accept the document and title the vehicle in Appellee's name he threatened to sue the Department.

It is unfortunate he did not file a civil suit before he attempted to secure a title through the clerk. The civil suit he later filed led to a Jessamine Circuit Court settlement where the seller of the car to Appellee paid State Farm $4,000.00, and then State Farm transferred title to the respondent. RA2, Vol. V, p. 638, Vol. III, Riley depo., pp. 427-8,

Appendix 4. This happened shortly before the return of the indictment charging Appellee with a crime for his attempt in securing title through Ms. McDaniel.

Appellant Martin and Detective Motley interviewed numerous persons including Justice Cabinet officials who had supported Appellee's claim to title.

An unusual situation arose when the investigating Kentucky State Police Officers went to see Larry Cleveland, Commonwealth Attorney of Franklin County, about the facts they had uncovered. Mr. Cleveland advised them that Appellee and Luke Morgan, general counsel for the Justice Cabinet, had been to see him earlier in the day. Appellee had left a notebook documenting his actions. Mr. Cleveland gave the notebook to the investigating officers. It was apparent to Appellant Martin, and he believes to Major Sapp and Detective Motley, that Mr. Cleveland was not interested in prosecuting the case. Mr. Cleveland later wrote a letter to the Attorney General asking that a special prosecutor be appointed because "a conflict exists." RA2, Vol. 1, pp. 104-112, Sum. Judg. Memo, (Martin) Ex. 1, Appendix 5. The Attorney General contacted David Stengel, Commonwealth Attorney for Jefferson County, Kentucky, and appointed him as special prosecutor in the case.

Mr. Stengel and his first assistant, Thomas Van DeRostyne, investigated the case including meeting with Kentucky State Police Officers. Appellant Martin was one of the officers. Special prosecutor Stengel, aided by his first assistant decided Appellee had violated KRS 516.030, forgery in the second degree. There is no evidence showing Appellant Martin, Major Sapp or Detective Motley had anything to do with selecting the statute of which Appellee was charged. RA2, Vol. III, pp. 392-448, Stengel depo.

A grand jury was convened in Franklin County. Special prosecutor Stengel believes Commonwealth Attorney Cleveland assisted him in convening the grand jury. The grand jury heard witnesses presented by the special prosecutor. The grand jury found probable cause to exist and returned an indictment charging Appellee with violating KRS 516.030, forgery in the second degree.

It appears prior to trial there were discovery disputes that were resolved by the trial judge. These disputes continued during the trial when Appellee's counsel contended he had not been given one of the McDaniel tape recorded interviews. It was then given to Appellee's counsel and used by Appellee at trial. A similar argument was made about a personal notebook of Major Sapp. It was produced to Appellee's counsel and used by him at trial. It was the prosecutor who decided what discovery materials were producible to Appellee's counsel before trial. The trial judge ruled on all evidentiary issues brought to his attention including Appellee's motions for judgment of acquittal. The trial judge permitted the case to be decided by the jury. The jury found the Appellee not guilty.

Appellee then brought this action. Appellee claims in his complaint that Martin and Sapp and Motley "were acting within the scope of their employment as police officers of the Kentucky State Police (KSP) and under the color of law and under the color of their authority as police officers for the Kentucky State Police, without probable cause . . ." RA1, pp. 1-10, verified complaint, Para. 8. Answers were filed and one defendant, Detective Bill Riley was dismissed from the action.

As grounds for this claim against Appellant Martin, Appellee claims that Martin lied to the grand jury about how many times Eva McDaniel, the Jessamine County Clerk, had

been interviewed. Martin testified she had been interviewed twice. He did interview her twice. The fact Detective Motley had previously interviewed her is not material since all of her interviews about her involvement with Appellee are consistent. The Motley interview is the same taped interview Appellee's counsel claimed he had not been given in discovery, but which was delivered to him and used by him at trial. Further, this interview is referenced in the Kentucky State Police case report given to Appellee's counsel as a part of discovery prior to trial.

Motions for summary judgments were filed by Martin, Sapp and Motley contending that they were entitled to the defense of qualified immunity. The trial judge denied the motions. Appellant and the other two police officers appealed to the Court of Appeals. The Court of Appeals in *Martin v. O'Daniel*, 2011 WL 1900165 (Ky. App. 2011) (2009-CA-001738-MR) affirmed the trial court's decision. The Court of Appeals holding was that the defense of qualified immunity was not available to the police officer because Appellee's complaint was not based on allegations of negligence. The Court held that the defense of qualified immunity is only available in claims sounding in negligence.

Following depositions of Special Prosecutor Stengel and first assistant DeRostyne, showing their decision to present the case to the grand jury, Appellant Martin and the other defendants renewed their motions for summary judgment. The trial court granted a summary judgment finding there were no issues of material fact about the prosecutor having made the decision to prosecute and undertaking the prosecution following the return of an indictment by the grand jury. RA2, Vol. V, pp. 719-24, Appendix 2. She found that Appellee could not prove the first element of malicious prosecution. She also found movant Martin's grand jury

testimony was privileged under existing Kentucky law and *Rehberg v. Paulk*, _____ U.S. _____, 132 S.Ct. 1497, 182 L.Ed.2d 593 (2012).

Appellee appealed to the Court of Appeals of Kentucky. The Court of Appeals reversed and remanded, finding that the officers were not entitled to the defense of qualified immunity because Appellee's claim did not sound in negligence and that the trial court erred in granting summary judgment on Appellee's malicious prosecution claim. Court of Appeals Opinion, Appendix 1.

This Court granted discretionary review.

ARGUMENT

The Court of Appeals Opinion first focuses on whether Appellant Martin, Major Sapp and Detective Motley are entitled to the defense of qualified immunity. While that defense had been raised in the trial court, the trial court's decision before this Court does not address the qualified immunity defense.

I. THE TRIAL COURT'S FINDING THAT APPELLEE CANNOT PROVE THE FIRST ELEMENT OF MALICIOUS PROSECUTION IS SUPPORTED BY LAW AND FACT.

This issue was properly preserved for review by being raised before the trial court on a motion for summary judgment and considered on appeal by the Court of Appeals. The trial judge in arriving at her decision found from the evidence that (1) the underlying criminal case was initiated by the return of an indictment in the Franklin Circuit Court, (2) upon the submission of the matter by the special prosecutor and his assistant, (3) depositions of the

prosecutors showed the special prosecutor made the decision to go forward with the prosecution, determined the crime to be charged, and (4) following the indictment prosecuted the case at trial. The trial judge further found that Appellant Martin and the other two officers neither arrested nor filed a criminal complaint against Appellee. There is no question or controversy about the trial court's findings. She is correct, that based on the findings, Appellee cannot prove the institution or continuation of judicial proceedings by Appellant Martin and the other officers.

The standard of review where the trial judge has granted a summary judgment is "whether the trial court correctly found there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *3D Enterprises Contracting Corp. v. Louisville & Jefferson Cnty. Metro Sewer Dist.*, 174 S.W.3d 440, 445 (Ky. 2005). Summary judgment is proper only where the movant shows the adverse party could not prevail under any circumstances." *Steelvest v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 479 (Ky. 1991).

In this case there are no issues of material fact and the Appellant Martin is entitled to judgment as a matter of law.

The trial court set forth the six basic elements necessary for the establishment of a claim of malicious prosecution: "(1) the initiation or continuation of original judicial proceedings, either civil or criminal, or of administrative or disciplinary proceeding, (2) by, or at the instance, of the plaintiff, (3) the termination of such proceedings in defendant's favor, (4) malice in the institution of the proceedings, (5) want or lack of probable cause for

the proceedings, and (6) the suffering of damages as a result of the proceedings. *Raine v. Drasin*, 621 S.W.2d 895, 899 (Ky. 1981)." Trial Court Opinion, p. 3, Appendix 2.

She continues on in the opinion as follows: "With regard to the first element, under Kentucky law, a criminal charge can be initiated by only three mechanisms:

1) by arrest made by a sworn police officer or citizen (KRS 431.005, RCr 6.02),

2) by filing a criminal complaint made by a citizen with the county attorney where the crime occurred (RCr 2.02, RCr 6.02),

3) by indictment returned by the grand jury (Ky. Constitution, Section 12, RCr 6.02).

The trial judge then finds as follows:

> "The underlying criminal case was initiated by the return of an indictment by the Franklin County Grand Jury, upon submission of the matter by the special prosecutor, R. David Stengel and his assistant, Thomas Van DeRostyne. Both prosecutors testified by deposition that it was Stengel who made the decision to go forward with the prosecution. He determined the crime to be charged, presented the case to the grand jury and prosecuted the case at trial after the indictment was returned. Further, none of the defendants made a prior arrest or filed a criminal complaint against the plaintiff. This leaves the plaintiff unable to prove the first element of malicious prosecution, the institution or continuation of judicial proceedings by the defendants."

In this case it appears the Court of Appeals ignored the finding of the trial judge that it was the Special Prosecutor "who made the decision to go forward with the prosecution, . . . determined the crime to be charged, presented the case at trial after the indictment was returned." The deposition testimony of Special Prosecutor Stengel and his first assistant Van DeRostyne show that after the case was assigned an investigation of the facts was undertaken

by the Special Prosecutor's Office prior to deciding to present the case to a grand jury. RA 2, Vol. III, pp. 392-448.

The Court of Appeals was correct in holding that Appellant Martin could not be prosecuted in this civil action for his testimony before the grand jury. Court of Appeals Opinion, pp. 12-13, Appendix 1. However, the Court was wrong in saying: "We note that only Detective Martin testified before the grand jury." Court of Appeals Opinion, FN 4, p. 13, Appendix 1.

The Court of Appeals opinion also makes reference to the plaintiff being able to rebut the presumption of probable cause. Here, the Appellee has nothing to rebut the grand jury finding of probable cause. It is undisputed that Appellee, knowing State Farm had the better claim to title to the automobile, went to the County Clerk and persuaded her to create a title document that the Department of Vehicle Regulation refused to accept. Appellee has made various complaints about the activities of the investigating officers, including Appellant Martin. First, he claimed Officer Riley said he would crush the car. Officer Riley was dismissed as a defendant by the trial court and no appeal was taken from the dismissal. This claim has nothing to do with Appellant Martin. The vehicle was never crushed. Later, Appellee claimed Major Sapp was insubordinate when he did not agree with the Justice and Public Safety officials who were lobbying for Appellee. Here again this has nothing to do with Appellant Martin. Thereafter, the Deputy Secretary, agreed by letter that the Kentucky State Police had jurisdiction in the investigation. Appendix 3, Gambill letter. Next Appellee complained because Appellant Martin and other officers went to see Franklin County Commonwealth Attorney Larry Cleveland about the case. Mr. Cleveland wrote a letter to

the Attorney General saying he had a conflict and requested appointment of a special prosecutor. Appendix 4, Cleveland letter. It must also be noted that Appellee had earlier gone with the general counsel of the Justice and Public Safety Cabinet to try to influence Commonwealth Attorney Cleveland. The State Police Officers, including Appellant Martin, provided information to Special Prosecutor Stengel. The next complaint of Appellee was that special prosecutor had not given him one of the recordings of the Ms. McDaniel interview. This interview was referred to in the case report previously given to Appellee. The recording was produced and used by Appellee at trial. There was also an argument that Major Sapp had failed to turn over certain notes showing Commonwealth Attorney Larry Cleveland had indicated he did not want to prosecute the case. This was not new to Appellee. Appellee knew that Mr. Cleveland had sought the appointment of a special prosecutor. None of the claims of Appellee indicate any untruthfulness by Appellant Martin, or the other investigating officers. There is no evidence rebutting the good faith decision of the special prosecutor in determining the charge, presenting the case to the grand jury and obtaining an indictment based on probable cause. Neither is there any question about Appellee using a confidential motor vehicle inspection report and representing to County Clerk McDaniel that he had a right to title to the vehicle. Appellees knew that State Farm Insurance had the right to the title of the vehicle. Further, there is nothing in the record to indicate that Special Prosecutor Stengel and his first assistant were misled in their decisions to indict by any misrepresentations by Appellant Martin or Officers Sapp and Motley.

The Court of Appeals opinion relies upon two federal court decisions, neither of which have any relevance here. *Sykes v. Anderson,* 625 F.3d 294 (6th Cir. 2010), is a case

where the investigating officers deliberately gave false information to and deliberately withheld exculpatory evidence from the prosecutor of the case. Special Prosecutor Stengel has testified no such actions happened here. Further, *Sykes* was a case from Michigan with the malicious prosecution law as applied being different from Kentucky law. In *Sykes* the Court said: "The Sixth Circuit 'recognize[s] a separate constitutionally cognizable claim of malicious prosecution under the Fourth Amendment, 'which' encompasses wrongful investigation, prosecution, conviction, and incarceration.'" *Id.* at 308. Kentucky malicious prosecution law differs from the federal standard above.

The Court of Appeals also relied upon *Phat's Bar & Grill v. Louisville Jefferson County Metro Government*, 918 F.Supp.2d 654 (W.D.Ky. 2013). That case cites *Sykes* and holds that police officers "cannot hide behind the officials (prosecutors) who they have defrauded." *Id.* At 661. Here *Phat's Bar* is distinguishable because it was decided under the Sixth Circuit malicious prosecution interpretation, and Special Prosecutor Stengel's testimony shows that he was not defrauded by facts given by the investigating officers.

The Court of Appeals went afield in this case looking for evidence that is not present here. The trial court correctly evaluated the relevant evidence and determined it was the special prosecutor who made the decisions to prosecute the case, not Appellant Martin and the other officers.

II. THE TRIAL COURT DID NOT BASE THE DECISION ON THE ISSUE OF QUALIFIED IMMUNITY BUT THE COURT OF APPEALS OPINION APPEARS INFLUENCED BY THAT ISSUE.

The Court of Appeals opinion contains an analysis of this case's journey through the courts, including prior appeals of the question of qualified immunity for Appellant Martin. However, the trial court based its opinion on the inability of Appellee to establish one of the elements of malicious prosecution under Kentucky law. This proceeding was before the Court of Appeals on appeal from a final judgment. It was not an interlocutory appeal from a denial of a summary judgment based on the defense of qualified immunity. The immunity referred to in the trial order's opinion is the absolute privilege afforded a witness from civil prosecution when testifying before a grand jury, citing *Rehberg v. Paulk*, _____ U.S. _____, 132 S.Ct. 1497, 182 L.Ed.2d 593 (2012), *Reed v. Isaacs,* 62 S.W.3d 398 (Ky. App. 2000) and *Bryant v. Commonwealth*, 490 F.2d 1273 (6th Cir. 1974).

III. THE COURT OF APPEALS IS CONFUSED ABOUT THE DEFENSE OF QUALIFIED IMMUNITY.

Because the Court of Appeals has erroneously focused so much of its opinion on the defense of qualified immunity it seems only fair to point out the error of law on that subject.

The Court of Appeals appears to believe that the defense of qualified immunity is only available where the plaintiff's claim is based on negligence. Court of Appeals Opinion, p. 9, Appendix 1. Following that reasoning if the plaintiff alleges malice, as in a suit for malicious prosecution, the mere allegation prevents consideration of the defense of qualified

immunity. Such an interpretation has never been the law on qualified immunity, except as recently stated by the Court of Appeals of Kentucky.

The most cited case in defining the defense of qualified immunity is *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Harlow and Butterfield, aides to President Nixon, were sued by Fitzgerald who claimed that he was a victim of a conspiracy by Harlow and Butterfield to deprive him of constitutional and statutory rights as a government employee. This was not a negligence action. The complaint alleged willful and unlawful conduct on the part of Harlow and Butterfield. The United States Supreme Court pointed out that "qualified or 'good faith' immunity is an affirmative defense that must be pleaded by a defendant official. *Gomez v. Toledo*, 446 U.S. 635 (1980)." *Id.* at 73 L.Ed.2d 408. This case simply says that when an official is sued for discretionary acts that he may claim the defense of qualified immunity if he acted in good faith. If the evidence should indicate that he acted maliciously and not in good faith then he cannot prevail on the defense.

The Court of Appeals appears to limit the consideration of the defense of qualified immunity to negligence cases based on language in *Yanero v. Davis*, 65 S.W.2d 510 (Ky. 2001). There, the Court stated "Qualified official immunity applies to the negligent performance by a public officer or employee . . ." *Id.* at 522. The Court of Appeals has read *Yanero* as meaning that qualified official immunity only applies to negligent actions. In its opinion it states as follows:

> "As noted by O'Daniel (Appellee here) the Supreme Court of Kentucky on *Yanero* limited the application of qualified immunity to claims of negligence. Therefore, to

> determine if the trial court erred in appellants' motions for summary judgment on the issue of qualified immunity, we must determine if O'Daniel's claim sounds in negligence. We hold it does not." Court of Appeals Opinion, pp. 9-10, Appendix 1.

A reading of the entire *Yanero* opinion shows that this Court did not intend to limit the defense of qualified immunity to suits in negligence. In fact on page 523 of the *Yanero* opinion it is stated:

> "The 'good faith' qualification to official immunity for discretionary acts was recognized by the Court of Appeals in both *Thompson v. Huecker*, Ky. App. 559 S.W.2d 488, 496 (1977) and *Ashby v. City of Louisville,* Ky. App. 841 S.W.2d 184, 189 (1992)."

Thompson was a suit claiming he had been wrongfully discharged from his state government position. It was not an action sounding in negligence. Thus in *Yanero* there is citation to a Court of Appeals case as authority for the defense of qualified immunity in a case not based on negligence. This Court has continued to recognize that the defense of qualified official immunity is available in cases sounding in intentional tort. *Lamb v. Holmes*, 162 S.W.3d 902 (Ky. 2005). The reason this Court in *Yanero* referred to the defense of qualified official immunity being applicable to negligent cases was because *Yanero* involved a claim of negligence.

In summary, it appears the Court of Appeals has in recent years misread *Yanero*. Qualified official immunity is available to Appellant Martin in this action. If the trial court had elected to consider that defense a judgment in favor of Appellant Martin would have been appropriate.

CONCLUSION

The opinion of the trial court is supported by the evidence and the law. The opinion of the Court of Appeals should be reversed and the opinion and judgment of the Franklin Circuit Court reinstated.

Respectfully submitted,

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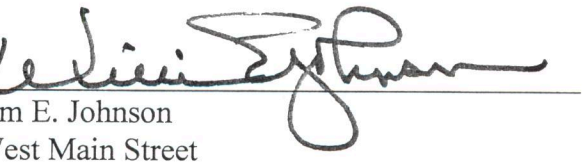
BY: 

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